



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Transaction Response Management, Inc.

File: B-228938.3

Date: April 4, 1988

DIGEST

1. Protest that agency failed to hold meaningful discussions is denied, even though there are only conflicting statements by the agency and protester concerning whether it was orally advised of the experience deficiency in its proposal, because the agency provided the protester written notice of deficiencies in its proposal that should have led the protester into the areas of its proposal needing amplification.
2. Protester's allegation that agency misapplied or misinterpreted the stated evaluation criteria is denied where the record shows that agency reasonably evaluated the protester's proposal based on qualifications encompassed by the stated evaluation factors.
3. Protest filed after award is untimely where the basis of protest was evident from the face of the solicitation.
4. Agency properly selected higher priced, more technically qualified proposals where the RFP advised that technical factors were far more important than price and the agency reasonably determined that the higher priced proposals had technical advantages that were consistent with the agency's needs.

DECISION

Transaction Response Management, Inc. (TRM), protests the evaluation of its proposal under request for proposals (RFP) No. FCGA-S2-SS201-N, issued by the Federal Supply Service, General Services Administration (GSA), for debt collection services.

We deny the protest in part and dismiss it in part.

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The RFP was issued on July 24, 1987, to obtain qualified firms to assist federal agencies in the collection of overdue consumer and commercial debts. The resulting contracts were to be indefinite delivery, requirements type contracts which would obligate the contractor to provide services for all delivery orders placed with them by federal agencies during the term of the contract. Delinquent accounts were to be turned over to the contractor in delivery orders containing several "batches" of individual accounts. The RFP stated that there were no restrictions on the size of a batch and, thus, a batch could be as small as several accounts totaling less than \$10,000 in delinquencies or as large as several thousand accounts totaling over \$1 million.

The RFP solicited separate prices for 15 line items and contemplated multiple awards to separate contractors. Line item Nos. 1-4 were for the collection of 1st referral and 2nd referral commercial debts, line item Nos. 5-10 were for the collection of 1st referral and 2nd referral consumer debts, and line items 11-15 were for the provision of adjunct services.^{1/} The RFP advised that award would be made to the offeror(s) whose offer(s) conforming to the RFP were most advantageous to the government considering technical factors and cost or price. Technical factors were deemed far more important than cost or price. Further, GSA reserved the right to make awards based on the expectation of superior performance based on technical quality, regardless of an offeror's cost or price relative to other offers.

The RFP listed the following evaluation factors:

1. Debt Management Strategy
2. Management Information System
3. Operational Capabilities
4. Experience/Business Background
5. Security Compliance

Factors 1, 2, and 3 were of equal importance (carrying the same weight) while factor 4 was greater than 5 but less than any of the first three factors.

^{1/} First referral debts were defined in the RFP as accounts properly placed by an ordering agency with a private sector debt collection contractor for the first time. Second referral debts are those accounts placed with a private sector debt collection contractor for the second time.

On the September 8, 1987, closing date, GSA received 30 proposals. TRM submitted an offer for line item Nos. 3, 4, 8, 9 and 10. The eventual awardee for these line items were American Credit and Collection, Inc. (ACC), and Credit Claims and Collection (CCC). The Source Selection Evaluation Board (SSEB) rated initial proposals based on a 100-point scale. TRM received an initial technical score 52.8625, while ACC and CCC received scores of 80.1875 and 85.625, respectively. Discussions were held with each offeror which resulted in best and final offers (BAFO) on November 16, 1987. After the BAFO's, the SSEB rated TRM at 53.3125, ACC at 80.7125 and CCC at 85.625. Although TRM submitted the lowest prices for its line items, the contracting officer determined that award to a lower technically rated offeror would not be in the government's best interest. GSA awarded line item Nos. 3, 4, 8, 9 and 11 to CCC and line item Nos. 10 and 11 to ACC.

TRM contends that GSA committed several errors in the evaluation and award process. TRM alleges that while GSA considered its proposal deficient in corporate experience, it failed to apprise TRM of this fact during discussions. Further, TRM argues that GSA misapplied or misinterpreted the experience/business background evaluation factor by improperly downgrading its proposal because it lacked experience as a commercial debt collector. TRM contends that commercial experience was not listed as an evaluation factor and to require commercial experience exceeds the government's minimum needs. TRM also contends that GSA did not conduct a proper cost/technical trade-off analysis prior to making the award. In this connection, offerors proposed prices by inserting a contingency fee representing a percentage of the debt reflecting the contractor's charge to the government for the cost of its collection. This fee is added to the face amount of the debt and charged to the delinquent debtor. TRM argues that because its fee was lower, there is a greater likelihood that it will collect on the debts and GSA could not have reasonably determined that a higher cost, more technically qualified proposal was in the best interest of the government.

To rectify the evaluation of its proposal, TRM suggests that we examine the rating and scoring sheets of each evaluator to determine the fairness of the evaluation of its proposal. However, in considering protests such as this, we do not determine independently the relative merit of proposals, as the evaluation of proposals is properly the function of the contracting agency which must bear the burden of any difficulties resulting from a defective evaluation. Pacord, Inc., B-224520.2, Mar. 6, 1987, 87-1 CPD ¶ 255. Further, contracting agencies are relatively free to determine the manner in which proposals will be evaluated so long as the

method selected provides a rational basis for source selection and the evaluation is conducted in accordance with the established criteria. Joint Action in Community Service, Inc., B-214564, Aug. 27, 1984, 84-2 CPD ¶ 228 at 2, 3. We will question the decision concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 CPD ¶ 607. The fact that the protester disagrees with the agency's evaluation of its proposal does not in itself render the evaluation unreasonable. Intelcom Education Services, B-220192.2, Jan. 24, 1986, 86-1 CPD ¶ 83.

Regarding whether discussions were meaningful, GSA reports that the contracting officer, Chairman of the SSEB, and a contract specialist specifically advised TRM during discussions that its proposal was deficient in debt collection experience. TRM denies that GSA ever advised it of any such deficiency and has submitted affidavits from TRM officials that attended the meeting. Further, TRM cites GSA's letter requesting BAFO's which details the deficiencies GSA found in its proposal, but does not include corporate experience. GSA indicates that corporate experience was not included in the letter to TRM because it was a newly formed company which did not list in its initial proposal that it had performed any contracts. Thus, the selecting officials concluded that TRM could not improve on its lack of corporate experience. Consequently, GSA officials advised TRM to elaborate on the experience involving the General Accounting Office (GAO) which was contained in its initial proposal. Some of TRM's principals had worked at GAO in the past as employees or consultants in the area of debt collection.

In the alternative, TRM argues that it should not have been included in the competitive range, if GSA believed that it could not improve on corporate experience. However, the Federal Acquisition Regulations (FAR) § 15.609(a) (FAC 84-16), provides that the contracting officer shall determine the competitive range, which is to include all proposals that have a reasonable chance of being selected for the award. Thus, we have held that proposals having a reasonable chance of being selected for award are not only those initial proposals which are acceptable as submitted but also those deficient proposals which are reasonably susceptible of being made acceptable through discussions. ACRAN, Inc., B-225654, May 14, 1987, 87-1 CPD ¶ 509. Here, the SSEB recommended that TRM be included in negotiations because it believed that TRM's proposal could be improved by

acceptable answers to critical questions. Consequently, we see nothing improper in GSA's decision to include TRM in the competitive range.

Further, we can not conclude from the record before us that GSA deprived TRM of meaningful discussions. Ultimately, the form and extent of discussions necessary to satisfy the requirement for meaningful discussions is a matter of judgment primarily for determination by contracting officials and is not subject to question by our Office unless shown clearly to be without a reasonable basis. BDM-Corp., B-201291, June 26, 1981, 81-1 CPD ¶ 532. We have rejected the notion that agencies are obligated to afford all encompassing negotiations. All that is necessary is that agencies lead offerors into areas of their proposals needing amplification. Target Financial Corp., B-226683, June 29, 1987, 87-1 CPD ¶ 641.

We do not think that it was unreasonable for the agency to conclude that TRM could not improve its corporate experience because the RFP contained specific instructions on how to demonstrate corporate experience and TRM did not include this information in its initial proposal. By electing not to include such information, TRM assumed the risk that GSA might downgrade it in the area of experience. Further, the affidavits submitted by TRM indicate that GSA requested TRM to draw the connection in its proposal between its GAO experience and the ability to perform a large scale contract. This is reflected in GSA's letter of negotiation which states that "these facts [concerning the GAO work] are essential in verifying TRM's ability to perform on a government contract;" and "the board question's TRM's ability to perform at the date of contract award." In our opinion, these concerns raised by GSA in oral discussions and in writing should have alerted TRM of the need to amplify its proposal in the area of experience. Therefore, we find that GSA conducted meaningful discussions.

TRM also contends that, GSA misapplied or misinterpreted the experience/business background evaluation factor in evaluating proposals because GSA rated proposals based on commercial debt collection experience. TRM argues that its key management personnel had sufficient experience in the debt collection industry but that GSA placed undue emphasis on corporate commercial experience in contravention of specific RFP provisions which advised that management history would be reflected in the experience of management personnel. Further, TRM argues that GSA did not accord the proper weight to its GAO experience. TRM states that key TRM management personnel developed a prototype system for the collection of government debts while working for GAO. This system was applied to approximately 1,000 accounts

referred to GAO by other federal agencies for collection. TRM states that it received an 81.2 percent collection rate, which led Congress and other federal officials to proclaim the system to be the model for the collection of the federal debt, since the collection rate was significantly higher than the collection rate of commercial debt collectors.

Based on the criteria in the RFP regarding business experience, we do not find that GSA acted unreasonably in rating proposals for corporate as well as debt collection experience. Under the experience/business background evaluation factor, the RFP instructs offerors to submit a proposal that demonstrates the offerors' experience within the debt collection industry and the various tasks included in the solicitation. Also, offerors were to submit a detailed narrative of their business experience, including length of time in operation, number of employees, date first opened and their current size (total number of client companies individual cases and amount in-house to be collected) as of the date of submission. Therefore, we find that corporate experience and commercial collection experience were qualifications that GSA reasonably could consider under the experience/business background evaluation factor because these were encompassed by the stated evaluation criteria. Moreover, we find that such experience was directly related to GSA's statement of its minimum needs. See Sage Diagnostics, B-222427, July 21, 1986, 86-2 CPD ¶ 85.

Although TRM argues that GSA's decision to evaluate corporate commercial debt collection experience exceeds the government's minimum needs, we find that this argument is untimely. Protests against alleged improprieties in a solicitation which are apparent prior to the closing date for the receipt of initial proposals must be filed prior to the closing date for the receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (1987). The fact that GSA intended to evaluate corporate commercial debt collection experience was apparent from the face of the solicitation, so that TRM should have protested the matter before the closing date. See PacOrd, Inc., B-224249, Jan. 5, 1987, 87-1 CPD ¶ 7.

There is no merit to TRM's contention that it was improperly downgraded because it lacked commercial collection experience. Among other things, the SSEB found that TRM had only been in existence since 1986 and that its debt collection experience was with only 1,000 accounts. Further, in connection with these accounts, the SSEB found that TRM's proposal did not include the dollar amount of debt referred or the percent of debt actually collected by TRM. Although, the SSEB felt that TRM had a strong background in areas that

dealt with the industry and an extensive management information system, the strengths of its proposal did not outweigh the weaknesses. GSA reports that the fact that TRM's total debt collection experience was extremely limited constituted a major deficiency. Considering that the successful contractor might be required to handle several thousand accounts in connection with a delivery order, we do not find that it was unreasonable that GSA downgraded its proposal because it lacked sufficient experience in collecting debts.

At the conference on the protest, TRM, in response to specific questioning, confirmed certain of the above findings of the SSEB. TRM stated that it had never performed any debt collection contracts as a company and that it did not have any employees currently working for it. Further, we are not persuaded that TRM's experience necessarily was relevant to 2nd referral experience within the context of this procurement because the RFP specifically defines 2nd referral debt collection as accounts properly placed by an ordering agency with a commercial debt collector, not a federal agency. While TRM has raised several arguments concerning its perception of its qualifications to perform these contracts, we find that these arguments merely reflect the protesters disagreement with the evaluation of its proposal and do not show that GSA unreasonably evaluated the proposal. Given the potential magnitude of a contract under a specific line item and TRM's acknowledged limited experience, we find that GSA's evaluation was not unreasonable.

As to the propriety of GSA's decision to make awards to higher cost more technically qualified offerors, we find no reason to question that decision. In a negotiated procurement, there is no requirement that award be made on the basis of lowest price. Rather, the contracting agency has discretion to make cost/technical tradeoffs consistent with the stated evaluation scheme and to select a higher priced, technically superior proposal if doing so is deemed to be worth the extra cost to the government. Our Office will not question the agency's decision regarding the significance of the difference in technical merit unless the decision is shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. Daggert Properties, B-227635, Oct. 22, 1987, 87-2 CPD ¶ 384.

Here, the RFP specifically reserved the government's right to make award to a higher priced offeror based on the expectation of superior performance from a more technically qualified offeror. Further, SSEB's evaluation reflects that ACC and CCC received significantly higher technical scores than TRM. GSA reports that a contractor with a technically superior proposal can be expected to collect a larger dollar volume of debt and that less revenue can be expected to

result from a technically inferior proposal. Furthermore, GSA states that in most cases the government will not be the party paying the collection fee. While we recognize the theoretical legitimacy of TRM's view that a lower fee may encourage more debtors to pay, we find GSA's conclusion that a more technically qualified offeror would collect more debt to be persuasive

The protest is denied in part and dismissed in part.

for Seymour E. Hinchman
James F. Hinchman
General Counsel